

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 ANTHONY EDWARD MARTINEZ, II,

Case No. 3:21-cv-00278-RCJ-CLB

4 Plaintiff

ORDER

5 v.

6 MEDICAL ADMINISTRATION
7 DEPARTMENT OF MENTAL HEALTH, et
al.,

8 Defendants

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10 On June 23, 2021, this Court issued an order directing Plaintiff to file a complaint
 11 and a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing
 12 fee on or before August 23, 2021. (ECF No. 7). On August 9, 2021, Plaintiff filed a
 13 complaint and an incomplete application to proceed *in forma pauperis*. (ECF Nos. 13,
 14). The August 23, 2021 deadline has now expired, and Plaintiff has not filed a fully
 15 complete application to proceed *in forma pauperis* or paid the full \$402 filing fee.

16 District courts have the inherent power to control their dockets and “[i]n the
 17 exercise of that power, they may impose sanctions including, where appropriate . . .
 18 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
 19 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure
 20 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
 21 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
 22 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
 23 1992) (affirming dismissal for failure to comply with an order requiring amendment of
 24 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal
 25 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
 26 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
 27 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
 28 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with

1 local rules).

2 In determining whether to dismiss an action for lack of prosecution, failure to obey
 3 a court order, or failure to comply with local rules, the court must consider several factors:
 4 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 6 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
 7 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
 8 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

9 Here, the Court finds that the first two factors, the public's interest in expeditiously
 10 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
 11 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
 12 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
 13 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
 14 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
 15 disposition of cases on their merits—is greatly outweighed by the factors in favor of
 16 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
 17 the court's order will result in dismissal satisfies the “consideration of alternatives”
 18 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
 19 F.2d at 1424. The Court's order requiring Plaintiff to file a fully complete application to
 20 proceed *in forma pauperis* or pay the full \$402 filing fee on or before August 23, 2021
 21 expressly stated: “IT IS FURTHER ORDERED that, if Plaintiff does not file complaint and
 22 a fully complete application to proceed *in forma pauperis* with all three documents or pay
 23 the full \$402 filing fee for a civil action on or before August 23, 2021, this case will be
 24 subject to dismissal without prejudice for Plaintiff to refile the case with the Court, under
 25 a new case number, when Plaintiff is able to file a complaint and has all three documents
 26 needed to file a complete application to proceed *in forma pauperis* or pays the the full
 27 \$402 filing fee.” (ECF No. 7 at 3). Thus, Plaintiff had adequate warning that dismissal
 28 would result from noncompliance with the Court's order to file a fully complete application

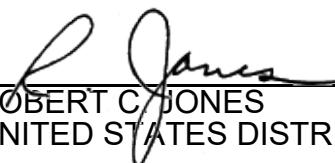
1 to proceed *in forma pauperis* or pay the full \$402 filing fee on or before August 23, 2021.

2 IT IS THEREFORE ORDERED that this action is dismissed without prejudice
3 based on Plaintiff's failure to file a fully complete application to proceed *in forma pauperis*
4 or pay the full \$402 filing fee in compliance with this Court's order dated June 23, 2021.
5 (ECF No. 7).

6 IT IS FURTHER ORDERED that all pending motions (ECF Nos. 3, 6, 8, 10, 11, 13,
7 15, and 17) are denied as moot.

8 IT IS FURTHER ORDERED that the Clerk of Court will close the case and enter
9 judgment accordingly. No other documents may be filed in this now-closed case.

10 DATED: September 7, 2021.


11 ROBERT C. JONES
12 UNITED STATES DISTRICT JUDGE

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